

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:10cr485 (LMB)
)	
JEFFREY ALEXANDER STERLING)	

**UNITED STATES' RESPONSE TO THE COURT'S ORDER REGARDING THE
TESTIMONY OF JAMES RISEN**

The United States, through undersigned counsel, hereby responds to the Court's Order, dated December 9, 2014, Dkt. No. 350, regarding the government's position as to the testimony of James Risen, and states as follows:

1. At a status conference on October 10, 2014, prosecutors advised the Court that, in connection with the possible testimony of Mr. Risen, they were in the process of complying with the revised regulations governing the issuance of subpoenas to members of the news media. 28 C.F.R. § 50.10. At subsequent hearings on November 20, 2014, and December 9, 2014, the government reiterated that the authorization process remained ongoing.

2. The § 50.10 approval process has now concluded, and pursuant to that regulation, the Attorney General has authorized the issuance of a subpoena for the testimony of Mr. Risen at trial as well as any necessary pre-trial hearings. The Attorney General has authorized prosecutors to seek Mr. Risen's testimony with regard to the following facts:

a. That Mr. Risen has a confidentiality agreement with his source (or sources) for Chapter Nine of his book *State of War* and that he will not breach that agreement (or agreements);

b. That Mr. Risen authored Chapter Nine of his book *State of War*, a March 2, 2002

newspaper article entitled *Fired by C.I.A., He says Agency Practiced Bias*; and a November 4, 2001 newspaper article entitled *Secret C.I.A. Site in New York Was Destroyed on Sept. 11*, that the chapter and articles accurately reflect information provided to him by his source (or sources), that statements attributed to an unnamed source were, in fact, made by an unnamed source, and that statements attributed to an identified source were, in fact, made by an identified source; and

c. That Mr. Risen had a prior non-confidential reporter-source relationship with Jeffrey Sterling.

3. Mr. Risen has at no time indicated a willingness to identify his source or sources. On that point, Mr. Risen has been consistent: under no circumstances would he provide such testimony. Risen's counsel recently indicated that Mr. Risen continues to take this position.

4. During the hearing on October 12, 2011, the Court endorsed the idea of convening a hearing to moot Mr. Risen's examination prior to his appearance before the jury at trial. Dkt. No. 269 at 31-34. As it did in 2011, the government concurs. A moot of Mr. Risen's testimony would permit the parties to see exactly what questions Mr. Risen will answer, while leaving sufficient time to resolve any related disputes efficiently and without burdening the jury's time. To the extent Mr. Risen may refuse to answer certain questions posed by defense counsel (who, of

course, are not bound by the limitations placed on the prosecution by the Attorney General's authorization), the moot will allow the Court to address any resulting Sixth Amendment issues.

Respectfully submitted,

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By /s/
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CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2014, I caused an electronic copy of the foregoing to be filed and served via ECF on Edward B. MacMahon, Jr., and Barry J. Pollack, counsel for the defendant, and David Kelley and Joel Kurtzberg, counsel for James Risen.

By _____ /s/

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